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**Subject:** Issue 63 follow up information  
[State v. Warren.pdf](#)  
[State v. Collins.pdf](#)

Barbara,

As follow up information to EPA on issue 63, I enclose two documents: The first document is a Court of Appeals decision in a case in which a defendant was charged with two separate counts of perjury for separate false statements made during testimony at one proceeding. *State v. Warren*, 229 Wis.2d 172, 599 NW2d 431 (Ct. App. 1999). The false statements involved a bank robbery. One false statement was about casing a bank to plan the robbery; the other was about hiding the money. The Court of Appeals ruled the false statements were different in fact and therefore could be charged separately under the perjury statute, s. 946.31, Wis. Stat., which provides “whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true in any matter, cause, action of proceeding. . . is guilty of a Class D felony.” Although the perjury statute itself does not indicate whether the legislature intended to allow multiple false statements in the same proceeding to be brought as multiple counts, our courts begin with the presumption that the legislature intended multiple punishments. *State v. Anderson*, 219 Wis.2d 739, 751, 580 N.W.2d 329 (1988). The Court of Appeals ruled there was no basis for overcoming that presumption, noting that the legislature’s use of the words “false material statement” suggested that each false material statement was punishable as a separate count.

The second document is an example of a false statements case brought by the Wisconsin Department of Justice under s. 283.91(4), Wis. Stat. As you know, this statute mirrors the federal statute and states that any person who knowingly makes any false statement may be fined or imprisoned. It is Wisconsin’s longstanding interpretation that this statute would allow each false statement made by a person on a single application, record, report, plan or other document required to be filed or maintained under the WPDES program to be charged as a separate violation. Although as we have discussed, Wisconsin does not have an example of a complaint alleging multiple counts based on multiple false statements in the same document, we do have an example (attached here) of a complaint which alleges separate counts for the same false statement regarding the volume of discharge. The false statement was made on multiple DMRs and each false statement is charged as a separate violation.

We provide this information as corroboration for the analysis in the Attorney General's statement and support for our request that EPA view Issue 63 as resolved.

Cheryl Heilman

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